

Exhibit 13

To the Zakarin Reply Declaration
in further support of
Extreme's motion for Summary Judgment

1 UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF NEW YORK
 3
 4

5 TWELVE SIXTY LLC, ARON)
 6 MARDEROSIAN, and ROBERT)
 7 MARDEROSIAN,)
 8)

9 Plaintiffs,) No. 1:17-CV-01479-PAC
 10)
 11)

12 vs.)
 13)
 14)

15 EXTREME MUSIC LIBRARY LIMITED, a)
 16 division of Sony/ATV Music)
 17 Publishing; EXTREME MUSIC)
 18 LIMITED; VIACOM INTERNATIONAL)
 19 INC., NEW CREATIVE MIX INC., HYPE)
 20 PRODUCTION MUSIC,)
 21)
 22)

23 Defendants.)
 24)
 25)

Deposition of TODD BRABEC, Volume I, taken on
 behalf of Defendants, at 10100 Santa Monica
 Boulevard, Suite 2200, Los Angeles, California
 90067-4120, beginning at 9:02 A.M. and ending at
 8:08 P.M. on Tuesday, November 6, 2018, before
 Amanda J. Kallas, Certified Shorthand Reporter
 No. 13901.

1 APPEARANCES:

2
3 For Plaintiffs:

4 MARDEROSIAN & COHEN

5 1260 FULTON STREET

6 FRESNO, CALIFORNIA 93721

7 559-441-7991

8 BY: MICK MARDEROSIAN, ESQ.

9 mick@mcc-legal.com

10
11 For Defendants EXTREME MUSIC LIBRARY LIMITED and
12 EXTREME MUSIC LIMITED:

13 PRYOR CASHMAN, LLP

14 7 TIMES SQUARE

15 NEW YORK, NEW YORK 10036-6569

16 212-421-4100

17 BY: ROSS M. BAGLEY, ESQ.

18 rbagley@pryorcashman.com

19 DONALD S. ZAKARIN, ESQ.

20 dzakarin@pryorcashman.com

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22 (APPEARANCES CONTINUED ON THE FOLLOWING PAGE.)
23
24
25

1 APPEARANCES CONTINUED:

2
3 For Defendants VIACOM INTERNATIONAL INC., NEW
4 CREATIVE MIX INC., and HYPE PRODUCTION MUSIC:

5 LOEB & LOEB, LLP

6 345 PARK AVENUE

7 NEW YORK, NEW YORK 10154

8 212-407-4000

9 BY: ERIN DENNIS SMITH, ESQ.

10 edennis@loeb.com

11 WOOK HWANG, ESQ.

12 whwang@loeb.com

13
14 Also Present:

15 RICHARD SMITH, Videographer
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1 MR. MARDEROSIAN: He's already answered that
2 question and told you. I'm going to object, it's
3 been asked and answered. It's now getting
4 argumentative and to the point you're harassing him.

5 THE WITNESS: There are other instances, I --
6 you know, I would need to look at documents again to
7 have to point out specific titles or -- both, here
8 and in the foreign marketplace.

9 BY MR. BAGLEY:

10 Q Now, when you wrote 943 registrations at
11 ASCAP, did that refer -- did that refer possibly to
12 work records rather than registrations? I think
13 you -- you testified earlier that you weren't quite
14 clear on the retention.

15 A I wasn't quite clear if they were -- they
16 were T-codes, or registrations, or, you know, or
17 work -- T-codes, meaning work codes and stuff. So,
18 you know -- but specific tracking numbers for
19 individual compositions, so I don't recall whether
20 they were actually registrations, or just T-codes,
21 or just work codes, or just identifying character --
22 characteristics of a particular musical composition,
23 that's all.

24 Q Have you seen any evidence --
25 Never mind.

1 MR. ZAKARIN: Do you have that? Do it.

2 MR. BAGLEY: I think this is Exhibit 7.

3 (Exhibit 7 was
4 marked for identification.)

5 BY MR. BAGLEY:

6 Q What I've just introduced as Exhibit 7 was
7 Exhibit 25 from the deposition of Robert
8 Marderosian.

9 Have you seen this document before?

10 A Yeah. I didn't -- I didn't go through it in
11 detail at all. I looked at it.

12 Q Okay.

13 A It's -- you know.

14 Q Now, do you --

15 MR. MARDEROSIAN: Is this -- is this for Aron
16 too, Ross, because it looks like it's double --
17 double-sided here. Or is this just Robert's?

18 MR. BAGLEY: No, I believe that -- well, it
19 was in his deposition, but I believe that it is both
20 of them.

21 MR. MARDEROSIAN: Yes, I think you're right
22 here.

23 MR. BAGLEY: All right.

24 MR. MARDEROSIAN: Hold on, let me just make
25 sure.

1 Yeah.

2 (Sotto Voce discussion.)

3 MR. MARDEROSIAN: Do you guys need a break?
4 Do you want to take a break?

5 MR. ZAKARIN: No, no. Absolutely not.

6 (Sotto Voce discussion.)

7 BY MR. BAGLEY:

8 Q So is this the document that you're referring
9 to when you -- when -- when you reference in your
10 report that there are --

11 MR. MARDEROSIAN: Here (indicating).

12 BY MR. BAGLEY:

13 Q Let's see.

14 MR. MARDEROSIAN: Here's --

15 (Sotto Voce discussion.)

16 BY MR. BAGLEY:

17 Q -- 943 registrations --

18 MR. ZAKARIN: Wait.

19 BY MR. BAGLEY:

20 Q -- at ASCAP?

21 A Is this -- is this from ASCAP? Or where is
22 this from? Oh, I see on the bottom, it's ascap.com.

23 Q Is this where the document -- is this where
24 you drew your conclusion from, as to the 943
25 registrations you identify?

1 A Did you count these up? Do you know?

2 Q I'm asking if you did, because you're the one
3 who said there was 943 of them.

4 A I'm just wondering if this -- I remember
5 seeing this document. I was just wondering what the
6 number total number is. And is this both writers or
7 is this --

8 Q I'm asking if this is the document that you
9 based your conclusion on or not.

10 A Yeah, I'm trying to figure out what the
11 document actually is. Is it combined to writers?
12 Or...

13 MR. MARDEROSIAN: These are the work records
14 that Richard Reimer produced in the case.

15 THE WITNESS: Oh, okay.

16 MR. MARDEROSIAN: For Aron and Robert. For
17 Aron, it's -- I think for Robert, it's 469, you see
18 it right here (indicating). And for Aron, it's 474.

19 Let me see what...

20 THE WITNESS: Okay. So these -- these came
21 from Richard. I see, okay.

22 BY MR. BAGLEY:

23 Q And under the rep column, you see that "N"
24 there?

25 A Yes.

1 Q And that means that the works are not in
2 ASCAP's repertory; correct?

3 A Yeah.

4 MR. MARDEROSIAN: I'm --

5 THE WITNESS: I think there were a couple in
6 here that were -- I remember looking at the -- I
7 haven't looked at this in a long time. Yeah, there
8 are a couple which I didn't understand. There's an
9 automator which says you have -- you have no ASCAP
10 writers on this thing, and shows ASCAP, yes, in the
11 repertory. Which, you know, can't be.

12 BY MR. BAGLEY:

13 Q Right, but is that a work -- which one are
14 you at?

15 A It's the Page 5 of 6. There are a number of
16 examples automate -- A-U-T-O-M-A-T --

17 Q Correct. But that's not published by the
18 defendants in the case; correct?

19 A No, but I'm looking at the list of things
20 that I saw and it just didn't make any sense.

21 Q Is it possible another one of those composers
22 or publishers are members at ASCAP, and that's why
23 it happens to be in their repertory?

24 MR. MARDEROSIAN: Where -- where are we
25 talking about, Ross?

1 Q Just to take us back to the 943
2 registrations -- or I think you used a phrase -- a
3 phrase --

4 A I think I use --

5 Q -- T --

6 A Title codes or --

7 Q T-codes?

8 A -- T-codes. I'm not sure what they're
9 called, but I think they're called title codes.
10 It's -- they're identifying -- identifying signature
11 of something that comes into them, even -- even if
12 they're not licensing.

13 Q So just to clarify, so the 943 registrations
14 that you referred to in your report could also be
15 title codes?

16 A Yeah. Well, I think when I looked at the --
17 the -- two -- the 943 were the total, I think, of
18 both the Marderosian brother's titles, which, if
19 they were on every title, then it would be half that
20 I suppose.

21 Q So --

22 A Correct, yeah. Yeah.

23 Q But that's the --

24 A I'm thinking --

25 Q That's the --

1 A -- of all this, yeah.

2 Q But the point is that it doesn't mean that
3 they're registered at ASCAP, it just means that
4 there is a work or title code, what you said --

5 A Yeah.

6 Q -- some type of work tracker for the ASCAP?

7 A Yeah, it could be --

8 MR. MARDEROSIAN: Objection. Vague as to the
9 term "registration."

10 THE WITNESS: The thing is, I don't know that
11 for a -- you know, whether they were registered or
12 whether they were -- I know there are T-codes
13 because they're work codes, you know. But how they
14 were -- got into ASCAP, you know, I have no idea.
15 I'm guessing it's through a common works
16 registration, but I'm guessing. Yeah.

17 BY MS. SMITH:

18 Q And just so I understand, you didn't
19 personally search ASCAP's database for the
20 Marderosian's works, did you?

21 A No.

22 Q Okay. And did you confirm with anyone at
23 ASCAP whether they were T-codes or registrations?

24 A No, I have not -- I have not discussed that
25 with ASCAP at all.

1 Q And how did you learn about them?

2 A I was shown and they were in the documents, I
3 think Mick gave them to me or they came in
4 through -- they -- they came through Richard Reimer,
5 which -- because Richard -- I know -- I know Richard
6 from inception, so I was just interested that he was
7 the one who sent them to whomever he sent them to.
8 But I saw them secondhand.

9 Q Okay. And did you see any evidence that
10 ASCAP made any payments on the works ASCAP
11 identified as being composed by the Marderosians to
12 Extreme as a publisher?

13 A Well, the thing is -- the -- the problem is,
14 without seeing the publisher's statements, I'll make
15 a statement that the Marderosians, as BMI
16 affiliates, should -- would never -- best of all
17 possibilities -- would never have been paid, by
18 ASCAP, their writer's share. And the --
19 corresponding publisher's share should not have been
20 paid, if it ever was.

21 But without seeing the Bayham or Extreme or
22 all those particular statements, and without knowing
23 what they're getting paid -- what they were paid on,
24 you know, I can tell you, the writers were never
25 paid. I don't know if the -- the publishers should

1 MR. HWANG: There's a question pending. Let
2 the witness answer the question as he was doing.

3 THE WITNESS: I saw them recently from Mick,
4 and I don't remember if I saw them before -- you
5 know, I'd have to go back to try to figure out
6 what...

7 BY MS. SMITH:

8 Q Did you see them before -- before you had
9 written your report?

10 A I don't think so. But I'm not 100 percent
11 sure. Really. So...

12 Q And just to tie this off, you don't know if
13 the 943 records that we talked about are in the
14 ASCAP repertory; correct?

15 A Oh, I don't know that -- if they're BMI
16 writers and BMI publishers, they're definitely not
17 in the ASCAP repertory. As listed, you know, on
18 the -- on the sheets.

19 MR. MARDEROSIAN: Got a question coming here,
20 Erin?

21 BY MS. SMITH:

22 Q Okay. And just to -- have you seen any cue
23 sheets that listed the wrong affiliation for the
24 Marderosians?

25 MR. MARDEROSIAN: I'm sorry? Can you restate

STATE OF _____)
) : ss
COUNTY OF _____)

I, TODD BRABEC, the witness
herein, having read the foregoing
testimony of the pages of this deposition,
do hereby certify it to be a true and
correct transcript, subject to the
corrections, if any, shown on the attached
page.

TODD BRABEC

Sworn and subscribed to before me,
this _____ day of _____, 2018.

Notary Public

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.

3
4 I, AMANDA KALLAS, C.S.R. No. 13901, in and
5 for the State of California, do hereby certify:

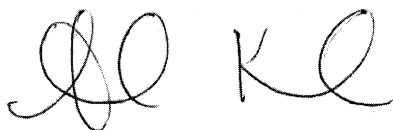
6 That prior to being examined, the witness
7 named in the foregoing deposition was by me duly
8 sworn to testify to the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken down by me
11 in shorthand at the time and place therein named and
12 thereafter reduced to typewriting under my
13 direction, and the same is a true, correct, and
14 complete transcript of said proceedings;

15 That if the foregoing pertains to the
16 original transcript of a deposition in a Federal
17 Case, before completion of the proceedings, review
18 of the transcript { } was { } was not required.

19 I further certify that I am not interested
20 in the event of this action.

21 Witness my hand this 13th day of
22 November, 2018.

23 
24

25 AMANDA KALLAS, C.S.R. No. 13901